

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-11-1-5-00445-16
45-004-15-1-5-01837-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-277-022.000-004
Assessment Years: 2011 & 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated the 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 with the Board.
2. Petitioner initiated the 2015 appeal with the PTABOA. The PTABOA issued notice of its final determination on August 16, 2016. On October 3, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on March 19, 2018. Neither the ALJ nor the Board inspected the property.
5. James Nowacki, Petitioner, was sworn as a witness. Robert W. Metz and Terrance Durousseau, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

6. The subject property is a vacant residential lot located at 9324-28 Pottowattomi Trail in Gary.
7. For both 2011 and 2015, the assessed value was \$8,100.

8. Petitioner requested an assessed value of \$3,500 for each year.

Record

9. The official record contains the following:

- a. A digital recording of the hearing,
- b. Exhibits:

Petitioner Exhibit 1:	GIS map,
Petitioner Exhibit 2:	Property record card (“PRC”) for 2013-2017,
Petitioner Exhibit 3:	PRC for 2008-2015,

Respondent Exhibit 1:	PRC,
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Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

10. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).
12. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased

above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value did not change from 2010 to 2011. Petitioner, therefore, has the burden of proof for 2011. Similarly, the assessed value did not change from 2014 to 2015. Petitioner, therefore, has the burden of proof for 2015.

Summary of Parties’ Contentions

15. Petitioner’s case:
 - a. Petitioner contends that the characteristics of the property shown on the PRC are incorrect. For example, he claims there are no utilities available and there is no paved road within a half mile of the property. Petitioner contends that Respondent knows the information is incorrect but believes it is not relevant. Petitioner contends that if the PRC was accurate, Respondent would reduce the assessed values accordingly. *Nowacki testimony; Pet’r Exs. 2 & 3.*
 - b. Petitioner contends the GIS map conflicts with the PRC. Specifically, he says that the GIS map shows that the road ends before it reaches the subject lot. It also shows the unimproved alley, the “paper streets,” and the lack of development in the area. *Nowacki testimony; Pet’r Ex. 1.*
 - c. Petitioner purchased the property for \$25 at a tax sale. He contends tax sales are the only market for these properties and there has been no other market activity to substantiate the values Respondent has applied. *Nowacki testimony.*
 - d. Although there has been some reduction in the assessed value from \$8,100 to \$7,900 over the last few years, Petitioner contends that reduction does not reflect the actual market value for the property. He requests a value of \$3,500 even though he contends the value may have actually declined further. *Nowacki testimony.*
 - e. Petitioner also contends that the appeal process is lengthy and places a significant burden on taxpayers to undertake the process. *Nowacki testimony.*
16. Respondent’s case:
 - a. Respondent contends that Petitioner has presented no probative evidence to support his requested value. Consequently, Respondent requests no change be made to the assessments. *Metz testimony.*

ANALYSIS

17. Petitioner failed to make a prima facie case for a reduction in the assessed values. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
 - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2 (c).
 - c. Petitioner purchased the property for \$25 in 2009. However, Petitioner did not request the property be assessed for the purchase price. Instead, he contends the property should be assessed at \$3,500 for each year at issue, but has presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner contends there are numerous errors on the PRC regarding the characteristics of the property. However, he did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of error in the assessment. *Eckerling v. Wayne Co. Ass’r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, Petitioner needed to show the assessment does not accurately reflect the subject property’s market value-in-use. *Id. See also P/A Builders 7 Developers, LLC v. Jennings Co. Ass’r*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is.)

- e. Petitioner contends the appeal process is a slow and tedious one. However, pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner had the right to appeal directly to the Board if the petitions were not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the alleged lengthy appeal process was due, in part, to Petitioner's inaction.
- f. Petitioner failed to make a prima facie case for changing the assessments. Where the petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 18. Petitioner failed to establish a prima facie case for either of the years at issue. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2011 and 2015 assessed values should not be changed.

ISSUED: June 13, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.